

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Civil Action No.: 04-11878-RCL

QWEST COMMUNICATIONS INTERNATIONAL INC., a Delaware corporation,

Plaintiff,

v.

CONQWEST, INC., a Massachusetts corporation,

Defendant.

PLAINTIFF'S MOTION TO AMEND THE COMPLAINT

Plaintiff, Qwest Communications International Inc. ("Qwest"), through its undersigned counsel, pursuant to Fed.R.Civ.P. 15, hereby moves to amend the allegations of its Complaint and Jury Demand to modify the Fourth Cause of Action from denial of trademark registration to cancellation of trademark registration. As grounds therefore, Qwest states as follows:

1. The Complaint in this matter was filed on August 27, 2004 and has not been previously amended. Plaintiff proposes to amend the Complaint in the form of the Amended Complaint for Damages and Injunctive Relief with Jury Demand submitted herewith as Exhibit A.

2. When the original Complaint was filed, the Defendant had an outstanding federal trademark application pending for the mark CONQWEST. The trademark application was approved for publication on January 18, 2005, and the opposition period began to run. Plaintiff's intention was to file an opposition to Defendant's trademark application prior to the expiration of

the opposition period February 17, 2005. However, Plaintiff's counsel inadvertently did not file a Notice of Opposition prior to the expiration of the opposition period.

4. Plaintiff's Complaint currently contains a cause of action for denial of trademark registration pursuant to 15 U.S.C. § 1119. *See* Complaint, Fourth Cause of Action. The cause of action is for an order that the Defendant's trademark application be denied registration in the United States Patent and Trademark Office.

5. Because the trademark will be likely be registered, Plaintiff wishes to amend this cause of action to instead request an order that Defendant's trademark registration be cancelled in the United States Patent and Trademark Office, pursuant to the same statutory section, 15 U.S.C. § 1119.

6. There is no trial date in this matter and this Motion to Amend will not delay discovery or the trial of this matter. The Scheduling Order provides that the deadline for amended pleadings is March 1, 2005. The fact discovery deadline is set for June 15, 2005.

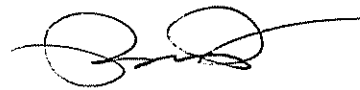
7. Pursuant to Fed.R.Civ.P. 15, motions to amend are to be freely granted when justice requires. Here, when the initial Complaint was filed, prior to publication of the Defendant's federal trademark application, Plaintiff fully intended to oppose the federal trademark application within the time frame allotted by the United States Patent and Trademark Office. The Plaintiff inadvertently failed to file an opposition to the trademark application and instead wishes to amend its fourth cause of action to include cancellation of the Defendant's mark.

WHEREFORE, the Plaintiff requests leave of this Court to amend the Complaint in the form of the Amended Complaint and Jury Demand submitted herewith as Exhibit A.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

Counsel for Plaintiff in this matter has contacted counsel for the Defendant ConQwest regarding this Motion to Amend in an attempt to confer in good faith to resolve the issue, but was unable to do so before the deadline for filing this motion.

Respectfully submitted this 1st day of March, 2005.



Christopher Weld, Jr. (BBO # 522230)
Raymond P. Ausrotas (BBO # 640315)
28 State Street, 31st Floor
Boston, MA 02109
(617) 720-2626
(617) 227-5777 (facsimile)

Kurt S. Lewis (Colo. Reg. No. 11,386)
LEWIS MEYERS & SCHEID LLC
2300 Fifteenth Street, Suite 320
Denver, Colorado 80202
(303) 534-5040
(303) 534-5039 (facsimile)

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the
above document was served upon the
attorney of record for each other party
by mail-hand on 3.1.05
